

110TH CONGRESS
1ST SESSION

S. 2245

To establish a commission to ensure food safety in the United States, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2007

Mr. DURBIN introduced the following bill; which was read twice and referred
to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish a commission to ensure food safety in the
United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Food Safety Authority
5 Modernization Act”.

6 **SEC. 2. CONGRESSIONAL BIPARTISAN FOOD SAFETY COM-**
7 **MISSION.**

8 (a) COMMISSION.—

9 (1) ESTABLISHMENT.—

1 (A) IN GENERAL.—There is established a
2 commission to be known as the “Congressional
3 Bipartisan Food Safety Commission” (referred
4 to in this Act as the “Commission”).

5 (B) PURPOSE.—The purpose of the Com-
6 mission shall be to act in a bipartisan, con-
7 sensus-driven fashion—

8 (i) to review the food safety system of
9 the United States;

10 (ii) to prepare a report that—

11 (I) summarizes information
12 about the food safety system as in ef-
13 fect as of the date of enactment of
14 this Act; and

15 (II) makes recommendations on
16 ways—

17 (aa) to modernize the food
18 safety system of the United
19 States;

20 (bb) to harmonize and up-
21 date food safety statutes;

22 (cc) to improve Federal,
23 State, local, and interagency co-
24 ordination of food safety per-

1 sonnel, activities, budgets, and
2 leadership;

3 (dd) to best allocate scarce
4 resources according to risk;

5 (ee) to ensure that regula-
6 tions, directives, guidance, and
7 other standards and require-
8 ments are based on best-available
9 science and technology;

10 (ff) to emphasize preventa-
11 tive rather than reactive strate-
12 gies; and

13 (gg) to provide to Federal
14 agencies funding mechanisms
15 necessary to effectively carry out
16 food safety responsibilities; and

17 (iii) to draft specific statutory lan-
18 guage, including detailed summaries of the
19 language and budget recommendations,
20 that would implement the recommenda-
21 tions of the Commission.

22 (2) MEMBERSHIP.—

23 (A) COMPOSITION.—The Commission shall
24 be composed of 19 members.

1 (B) ELIGIBILITY.—Members of the Com-
2 mission shall—

3 (i) have specialized training, edu-
4 cation, or significant experience in at least
5 1 of the areas of—

6 (I) food safety research;

7 (II) food safety law and policy;

8 and

9 (III) program design and imple-
10 mentation;

11 (ii) consist of—

12 (I) the Secretary of Agriculture
13 (or a designee);

14 (II) the Secretary of Health and
15 Human Services (or a designee);

16 (III) 1 Member of the House of
17 Representatives; and

18 (IV) 1 Member of the Senate;

19 and

20 (V) 15 additional members that
21 include, to the maximum extent prac-
22 ticable, representatives of—

23 (aa) consumer organizations;

24 (bb) agricultural and live-
25 stock production;

- 1 (cc) public health profes-
- 2 sionals;
- 3 (dd) State regulators;
- 4 (ee) Federal employees; and
- 5 (ff) the livestock and food
- 6 manufacturing and processing in-
- 7 dustry.

8 (C) APPOINTMENTS.—

9 (i) IN GENERAL.—The appointment of
 10 the members of the Commission shall be
 11 made not later than 60 days after the date
 12 of enactment of this Act.

13 (ii) CERTAIN APPOINTMENTS.—Of the
 14 members of the Commission described in
 15 subparagraph (B)(ii)(V)—

16 (I) 2 shall be appointed by the
 17 President;

18 (II) 7 shall be appointed by a
 19 working group consisting of—

20 (aa) the Chairman of each
 21 of the Committee on Agriculture,
 22 Nutrition, and Forestry and the
 23 Committee on Health, Education,
 24 Labor, and Pensions of the Sen-
 25 ate;

1 (bb) the Chairman of each
 2 of the Committee on Agriculture
 3 and the Committee on Energy
 4 and Commerce of the House of
 5 Representatives;

6 (cc) the Speaker of the
 7 House of Representatives; and

8 (dd) the majority leader of
 9 the Senate; and

10 (III) 6 shall be appointed by a
 11 working group consisting of—

12 (aa) the Ranking Member of
 13 each of the Committees described
 14 in items (aa) and (bb) of sub-
 15 clause (II);

16 (bb) the minority leader of
 17 the House of Representatives;
 18 and

19 (cc) the minority leader of
 20 the Senate.

21 (D) TERM.—A member of the Commission
 22 shall be appointed for the life of the Commis-
 23 sion.

24 (E) VACANCIES.—A vacancy on the Com-
 25 mission—

1 (i) shall not affect the powers of the
2 Commission; and

3 (ii) shall be filled in the same manner
4 as the original appointment was made.

5 (3) MEETINGS.—

6 (A) INITIAL MEETING.—Except as pro-
7 vided in subparagraph (B), the initial meeting
8 of the Commission shall be conducted in Wash-
9 ington, District of Columbia, not later than 30
10 days after the date of appointment of the final
11 member of the Commission under paragraph
12 (2)(C).

13 (B) MEETING FOR PARTIAL APPOINT-
14 MENT.—If, as of the date that is 90 days after
15 the date of enactment of this Act, all members
16 of the Commission have not been appointed
17 under paragraph (2)(C), but at least 8 mem-
18 bers have been appointed, the Commission may
19 hold the initial meeting of the Commission.

20 (C) OTHER MEETINGS.—The Commission
21 shall—

22 (i) hold a series of at least 5 stake-
23 holder meetings to solicit public comment,
24 including—

1 (I) at least 1 stakeholder meet-
 2 ing, to be held in Washington, Dis-
 3 trict of Columbia; and

4 (II) at least 4 stakeholder meet-
 5 ings, to be held in various regions of
 6 the United States; and

7 (ii) meet at the call of—

8 (I) the Chairperson;

9 (II) the Vice-Chairperson; or

10 (III) a majority of the members
 11 of the Commission.

12 (D) PUBLIC PARTICIPATION; INFORMA-
 13 TION.—To the maximum extent practicable—

14 (i) each meeting of the Commission
 15 shall be open to the public; and

16 (ii) all information from a meeting of
 17 the Commission shall be recorded and
 18 made available to the public.

19 (E) QUORUM.—With respect to meetings
 20 of the Commission—

21 (i) a majority of the members of the
 22 Commission shall constitute a quorum for
 23 the conduct of business of the Commission;
 24 but

1 (ii) for the purpose of a stakeholder
2 meeting described in subparagraph (C)(i),
3 4 or more members of the Commission
4 shall constitute a quorum.

5 (F) FACILITATOR.—The Commission shall
6 contract with a nonpolitical, disinterested third-
7 party entity to serve as a meeting facilitator.

8 (4) CHAIRPERSON AND VICE-CHAIRPERSON.—
9 At the initial meeting of the Commission, the mem-
10 bers of the Commission shall select from among the
11 members a Chairperson and Vice-Chairperson of the
12 Commission.

13 (b) DUTIES.—

14 (1) RECOMMENDATIONS.—The Commission
15 shall review and consider the statutes, studies, and
16 reports described in paragraph (2) for the purpose
17 of understanding the food safety system of the
18 United States in existence as of the date of enact-
19 ment of this Act.

20 (2) STATUTES, STUDIES, AND REPORTS.—The
21 statutes, studies, and reports referred to in para-
22 graph (1) are—

23 (A) with respect to laws administered by
24 the Secretary of Agriculture—

- 1 (i) the Federal Seed Act (7 U.S.C.
2 1551 et seq.);
- 3 (ii) the Agricultural Marketing Act of
4 1946 (7 U.S.C. 1621 et seq.);
- 5 (iii) the Animal Health Protection Act
6 (7 U.S.C. 8301 et seq.);
- 7 (iv) the Lacey Act Amendments of
8 1981 (16 U.S.C. 3371 et seq.);
- 9 (v) the Poultry Products Inspection
10 Act (21 U.S.C. 451 et seq.);
- 11 (vi) the Federal Meat Inspection Act
12 (21 U.S.C. 601 et seq.); and
- 13 (vii) the Egg Products Inspection Act
14 (21 U.S.C. 1031 et seq.);
- 15 (B) with respect to laws administered by
16 the Secretary of the Treasury, the Federal Al-
17 cohol Administration Act (27 U.S.C. 201 et
18 seq.);
- 19 (C) with respect to laws administered by
20 the Federal Trade Commission, the Act of Sep-
21 tember 26, 1914 (15 U.S.C. 41 et seq.);
- 22 (D) with respect to laws administered by
23 the Secretary of Health and Human Services—

1 (i) chapters I through IV of the Fed-
2 eral Food, Drug, and Cosmetic Act (21
3 U.S.C. 301 et seq.);

4 (ii) the Public Health Service Act (42
5 U.S.C. 201 et seq.);

6 (iii) the Import Milk Act (21 U.S.C.
7 141 et seq.);

8 (iv) the Food Additives Amendment of
9 1958 (Public Law 85–929; 52 Stat. 1041);

10 (v) the Fair Packaging and Labeling
11 Act (Public Law 89–755; 80 Stat. 1296);

12 (vi) the Infant Formula Act of 1980
13 (21 U.S.C. 301 note; Public Law 96–359);

14 (vii) the Pesticide Monitoring Im-
15 provements Act of 1988 (Public Law 100–
16 418; 102 Stat. 1411);

17 (viii) the Nutrition Labeling and Edu-
18 cation Act of 1990 (21 U.S.C. 301 note;
19 Public Law 101–535);

20 (ix) the Food and Drug Administra-
21 tion Modernization Act of 1997 (21 U.S.C.
22 301 note; Public Law 105–115); and

23 (x) the Public Health Security and
24 Bioterrorism Preparedness and Response

1 Act of 2002 (21 U.S.C. 201 note; Public
2 Law 107–188);

3 (E) with respect to laws administered by
4 the Attorney General, the Federal Anti-Tam-
5 pering Act (18 U.S.C. 1365 note; Public Law
6 98–127);

7 (F) with respect to laws administered by
8 the Administrator of the Environmental Protec-
9 tion Agency—

10 (i) the Federal Insecticide, Fungicide,
11 and Rodenticide Act (7 U.S.C. 136 et
12 seq.);

13 (ii) the Food Quality Protection Act
14 of 1996 (7 U.S.C. 136 note; Public Law
15 104–170);

16 (iii) the Toxic Substances Control Act
17 (15 U.S.C. 2601 et seq.); and

18 (iv) the Safe Drinking Water Act of
19 1974 (42 U.S.C. 201 note; Public Law 93–
20 523); and

21 (G) with respect to laws administered by
22 the Secretary of Transportation, chapter 57 of
23 subtitle II of title 49, United States Code (re-
24 lating to sanitary food transportation); and

1 (H) with respect to Government studies on
 2 food safety—

3 (i) the report of the National Acad-
 4 emies of Science entitled “Ensuring Safe
 5 Food from Production to Consumption”
 6 and dated 1998;

7 (ii) the report of the National Acad-
 8 emies of Science entitled “Scientific Cri-
 9 teria to Ensure Safe Food” and dated
 10 2003;

11 (iii) reports of the Office of the In-
 12 spector General of the Department of Agri-
 13 culture, including—

14 (I) report 24601–0008–CH, enti-
 15 tled “Egg Products Processing In-
 16 spection” and dated September 18,
 17 2007;

18 (II) report 24005–1–AT, entitled
 19 “Food Safety and Inspection Serv-
 20 ice—State Meat and Poultry Inspec-
 21 tion Programs” and dated September
 22 27, 2006;

23 (III) report 24601–06–CH, enti-
 24 tled “Food Safety and Inspection

1 Service's In-Plant Performance Sys-
2 tem" and dated March 28, 2006;

3 (IV) report 24601-05-AT, enti-
4 tled "Hazard Analysis and Critical
5 Control Point Implementation at Very
6 Small Plants" and dated June 24,
7 2005;

8 (V) report 24601-04-HY, enti-
9 tled "Food Safety and Inspection
10 Service Oversight of the 2004 Recall
11 by Quaker Maid Meats, Inc." and
12 dated May 18, 2005;

13 (VI) report 24501-01-FM, enti-
14 tled "Food Safety and Inspection
15 Service Application Controls—Per-
16 formance Based Inspection System"
17 and dated November 24, 2004;

18 (VII) report 24601-03-CH, enti-
19 tled "Food Safety and Inspection
20 Service Use of Food Safety Informa-
21 tion" and dated September 30, 2004;

22 (VIII) report 24601-03-HY, en-
23 titled "Food Safety and Inspection
24 Service Effectiveness Checks for the

1 2002 Pilgrim's Pride Recall" and
2 dated June 29, 2004;

3 (IX) report 24601-02-HY, enti-
4 tled "Food Safety and Inspection
5 Service Oversight of the Listeria Out-
6 break in the Northeastern United
7 States" and dated June 9, 2004;

8 (X) report 24099-05-HY, enti-
9 tled "Food Safety and Inspection
10 Service Imported Meat and Poultry
11 Equivalence Determinations Phase
12 III" and dated December 29, 2003;

13 (XI) report 24601-2-KC, enti-
14 tled "Food Safety and Inspection
15 Service—Oversight of Production
16 Process and Recall at Conagra Plant
17 (Establishment 969)" and dated Sep-
18 tember 30, 2003;

19 (XII) report 24601-1-Ch, enti-
20 tled "Laboratory Testing Of Meat
21 And Poultry Products" and dated
22 June 21, 2000;

23 (XIII) report 24001-3-At,
24 24601-1-Ch, 24099-3-Hy, 24601-4-
25 At, entitled "Food Safety and Inspec-

1 tion Service: HACCP Implementation,
2 Pathogen Testing Program, Foreign
3 Country Equivalency, Compliance Ac-
4 tivities” and dated June 21, 2000;
5 and

6 (XIV) report 24001-3-At, enti-
7 tled “Implementation of the Hazard
8 Analysis and Critical Control Point
9 System” and dated June 21, 2000;
10 and

11 (I) with respect to reports prepared by the
12 Government Accountability Office, the reports
13 designated—

- 14 (i) GAO-05-212;
- 15 (ii) GAO-02-47T;
- 16 (iii) GAO/T-RCED-94-223;
- 17 (iv) GAO/RCED-99-80;
- 18 (v) GAO/T-RCED-98-191;
- 19 (vi) GAO/RCED-98-103;
- 20 (vii) GAO-07-785T;
- 21 (viii) GAO-05-51;
- 22 (ix) GAO/T-RCED-94-311;
- 23 (x) GAO/RCED-92-152;
- 24 (xi) GAO/T-RCED-99-232;
- 25 (xii) GAO/T-RCED-98-271;

- 1 (xiii) GAO-07-449T;
- 2 (xiv) GAO-05-213;
- 3 (xv) GAO-04-588T;
- 4 (xvi) GAO/RCED-00-255;
- 5 (xvii) GAO/RCED-00-195; and
- 6 (xviii) GAO/T-RCED-9-256.

7 (3) REPORT.—Not later than 360 days after
 8 the date on which the Commission first meets, the
 9 Commission shall submit to the President and Con-
 10 gress a report that includes the report and sum-
 11 maries, statutory language recommendations, and
 12 budget recommendations described in clauses (ii)
 13 and (iii) of subsection (a)(1)(B).

14 (c) POWERS OF THE COMMISSION.—

15 (1) HEARINGS.—The Commission or, at the di-
 16 rection of the Commission, any member of the Com-
 17 mission, may, for the purpose of carrying out this
 18 section—

19 (A) hold such hearings, meet and act at
 20 such times and places, take such testimony, re-
 21 ceive such evidence, and administer such oaths;
 22 and

23 (B) require, by subpoena or otherwise, the
 24 attendance and testimony of such witnesses and
 25 the production of such books, records, cor-

1 respondence, memoranda, papers, documents,
2 tapes, and materials;
3 as the Commission or member considers advisable.

4 (2) ISSUANCE AND ENFORCEMENT OF SUB-
5 POENAS.—

6 (A) ISSUANCE.—A subpoena issued under
7 paragraph (1)(B) shall—

8 (i) bear the signature of the Chair-
9 person of the Commission; and

10 (ii) be served by any person or class
11 of persons designated by the Chairperson
12 for that purpose.

13 (B) ENFORCEMENT.—In the case of contu-
14 macy or failure to obey a subpoena issued
15 under paragraph (1)(B), the United States dis-
16 trict court for the district in which the subpoe-
17 naed person resides, is served, or may be found,
18 may issue an order requiring the person to ap-
19 pear at any designated place to testify or to
20 produce documentary or other evidence.

21 (C) NONCOMPLIANCE.—Any failure to
22 obey the order of the court may be punished by
23 the court as a contempt of court.

24 (D) WITNESS ALLOWANCES AND FEES.—

1 (i) IN GENERAL.—Section 1821 of
2 title 28, United States Code, shall apply to
3 a witness requested or subpoenaed to ap-
4 pear at a hearing of the Commission.

5 (ii) EXPENSES.—The per diem and
6 mileage allowances for a witness shall be
7 paid from funds available to pay the ex-
8 penses of the Commission.

9 (3) INFORMATION FROM FEDERAL AGENCIES.—

10 (A) IN GENERAL.—The Commission may
11 secure directly, from any Federal agency, such
12 information as the Commission considers nec-
13 essary to carry out this section.

14 (B) PROVISION OF INFORMATION.—

15 (i) IN GENERAL.—Subject to subpara-
16 graph (C), on the request of the Commis-
17 sion, the head of a Federal agency de-
18 scribed in subparagraph (A) shall expedi-
19 tiously furnish information requested by
20 the Commission to the Commission.

21 (ii) ADMINISTRATION.—The fur-
22 nishing of information by a Federal agency
23 to the Commission shall not be considered
24 a waiver of any exemption available to the

1 agency under section 552 of title 5, United
2 States Code.

3 (C) INFORMATION TO BE KEPT CONFIDEN-
4 TIAL.—For purposes of section 1905 of title 18,
5 United States Code—

6 (i) the Commission shall be considered
7 an agency of the Federal Government; and

8 (ii) any individual employed by an in-
9 dividual, entity, or organization that is a
10 party to a contract with the Commission
11 under this section shall be considered an
12 employee of the Commission.

13 (d) COMMISSION PERSONNEL MATTERS.—

14 (1) MEMBERS.—

15 (A) NON-FEDERAL EMPLOYEES.—A mem-
16 ber of the Commission who is not an officer or
17 employee of the Federal Government shall be
18 compensated at a rate equal to the daily equiva-
19 lent of the annual rate of basic pay prescribed
20 for level IV of the Executive Schedule under
21 section 5315 of title 5, United States Code, for
22 each day (including travel time) during which
23 the member is engaged in the performance of
24 the duties of the Commission.

1 (B) FEDERAL EMPLOYEES.—A member of
2 the Commission who is an officer or employee
3 of the Federal Government shall serve without
4 compensation in addition to the compensation
5 received for the services of the member as an
6 officer or employee of the Federal Government.

7 (C) TRAVEL EXPENSES.—A member of the
8 Commission shall be allowed travel expenses, in-
9 cluding per diem in lieu of subsistence, at rates
10 authorized for an employee of an agency under
11 subchapter I of chapter 57 of title 5, United
12 States Code, while away from the home or reg-
13 ular place of business of the member in the per-
14 formance of the duties of the Commission.

15 (2) STAFF.—

16 (A) EXECUTIVE DIRECTOR.—Not later
17 than 30 days after the Chairperson and Vice-
18 Chairperson of the Commission are selected
19 under subsection (a)(4), the Chairperson and
20 Vice-Chairperson shall jointly select an indi-
21 vidual to serve as executive director of the Com-
22 mission.

23 (B) ADDITIONAL STAFF.—The Chair-
24 person of the Commission may, without regard
25 to the civil service laws (including regulations),

1 appoint and terminate the appointment of such
2 other additional personnel as are necessary to
3 enable the Commission to perform the duties of
4 the Commission.

5 (C) CONFIRMATION OF EXECUTIVE DIREC-
6 TOR.—The employment of an executive director
7 under this paragraph shall be subject to con-
8 firmation by the Commission.

9 (D) COMPENSATION.—

10 (i) IN GENERAL.—Except as provided
11 in clause (ii), the Chairperson of the Com-
12 mission may fix the compensation of the
13 executive director and other personnel
14 without regard to the provisions of chapter
15 51 and subchapter III of chapter 53 of
16 title 5, United States Code, relating to
17 classification of positions and General
18 Schedule pay rates.

19 (ii) MAXIMUM RATE OF PAY.—The
20 rate of pay for the executive director and
21 other personnel shall not exceed the rate
22 payable for level II of the Executive Sched-
23 ule under section 5316 of title 5, United
24 States Code.

1 (3) DETAIL OF FEDERAL GOVERNMENT EM-
2 PLOYEES.—

3 (A) IN GENERAL.—An employee of the
4 Federal Government may be detailed to the
5 Commission, without reimbursement, for such
6 period of time as is permitted by law.

7 (B) CIVIL SERVICE STATUS.—The detail of
8 the employee shall be without interruption or
9 loss of civil service status or privilege.

10 (4) PROCUREMENT OF TEMPORARY AND INTER-
11 MITTENT SERVICES.—The Chairperson, Vice-Chair-
12 person, and executive director of the Commission
13 may procure temporary and intermittent services in
14 accordance with section 3109(b) of title 5, United
15 States Code, at rates for individuals that do not ex-
16 ceed the daily equivalent of the annual rate of basic
17 pay prescribed for level IV of the Executive Schedule
18 under section 5316 of that title.

19 (e) FUNDING AND SUPPORT SERVICES.—For each
20 fiscal year, the Secretary of Agriculture and the Secretary
21 of Health and Human Services shall provide to fund the
22 Commission and carry out this section—

23 (1) from funds made available to the Secretary
24 of Agriculture under section 32 of the Act of August
25 24, 1935 (7 U.S.C. 612c) and amounts made avail-

1 able for the Office of the Secretary of Health and
 2 Human Services from appropriations Acts, such
 3 equal amounts as are necessary to fund the Commis-
 4 sion and otherwise carry out this section; and

5 (2) such equal contributions of support services
 6 as are necessary to assist the Commission in car-
 7 rying out the duties of the Commission under this
 8 section.

9 (f) TERMINATION.—The Commission shall terminate
 10 on the date that is 60 days after the date on which the
 11 Commission submits the report under subsection (b)(2).

12 **SEC. 3. TERMINATION OF AUTHORITY RELATING TO FOOD**
 13 **AND FOOD SAFETY.**

14 (a) TERMINATION OF AUTHORITY.—The budget au-
 15 thority to implement the provisions of law described in
 16 subsection (b) relating to food and food safety shall termi-
 17 nate on the date that is 2 years after the date of enact-
 18 ment of this Act.

19 (b) PROVISIONS OF LAW.—The provisions of law re-
 20 ferred to in subsection (a) are—

21 (1) the Poultry Products Inspection Act (21
 22 U.S.C. 451 et seq.);

23 (2) the Federal Meat Inspection Act (21 U.S.C.
 24 601 et seq.);

- 1 (3) the Egg Products Inspection Act (21 U.S.C.
- 2 1031 et seq.); and
- 3 (4) chapters I through IV of the Federal Food,
- 4 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

